



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,423	10/24/2003	Christian Schoenfeld	7466 US	6045
71012	7590	09/18/2009		
Fogarty, L.L.C. P.O. Box 703695 Dallas, TX 75370-3695				
EXAMINER				
VU, VIET DUY				
ART UNIT		PAPER NUMBER		
2454				
MAIL DATE		DELIVERY MODE		
09/18/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/693,423
Filing Date: October 24, 2003
Appellant(s): SCHOENFELD, CHRISTIAN

Michael J. Fogarty III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 6, 2009
appealing from the Office action mailed October 24, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0225876 OLIVER et al 12-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims. It is noted that the final rejection, mailed October 24, 2008, has been slightly revised to more clearly address appellant arguments. No new grounds of rejection has been introduced.

Claims 1-2, 4-10 and 12-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver et al, U.S. pat. Appl. Pub. No. 2003/0225876.

Per claims 1-2, 4 and 12-16, Oliver discloses a method of adapting a user interface on a display of a network protocol tester having a visual network plan which is used for the

configuration of the network monitoring tasks by a user comprising the step of:

- a) generating a visual network plan by the protocol tester from a data file for description of a graphical user interface including positions and connections (see par. [34] and [37]);
- b) modifying the visual network plan in comparison to a basic network plan (i.e., without the performance metrics) (see par. [28]) by marking/coloring the network elements according to hardware (i.e., selected/existed network elements) and/or software (i.e., coloring scheme, performance metric) existed in the protocol tester (see par. [29],[54-55]), wherein an interpreter (performance monitor interface) is used to mark/select elements and their associated performance metrics (see par. [54-56]).

Oliver does not explicitly teach performing network testing/monitoring tasks for a telecommunication network. It would have been obvious to one of ordinary skill in the art at the time the invention was made to practice Oliver's invention on any known networks including telecommunication networks.

Oliver also does not explicitly teach that some of data files being text files.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to recognize that some

data associated with the network element such as description of a router or server would have been in text data because it would have enabled the user to view the element description.

Per claims 5-10, Oliver teaches generating and storing performance data for subsequent retrieval and use by the protocol tester (see par. [25]).

Claims 17-19 are similar in scope as that of claims 1-2, 4-10 and 12-16.

Per claims 20-21, Oliver teaches defining and configuring software components (e.g., polling agents) and hardware components (e.g., master database) to implement the monitoring system (see par. [31], [33]). It would have been obvious to one skilled in the art that such hardware and software components must have been properly identified (i.e., by identifiers, addresses, etc.,) by the monitoring system.

(10) Response to Argument

Per claim 1, Appellant alleges that Oliver does not teach modifying visual network plan according to hardware/software exists in the protocol tester because Oliver merely teaches modifying colors of the network elements instead of modification of a visual network plan.

The examiner disagrees. Olvier uses colors to show the attributes (i.e., performance metrics) of the network elements (see par. [9], [26]). Thus, changes of color would represent changes of attributes of one or more network elements. A change of at least one network element attribute would represent a change of the visual network plan.

Appellant also alleges that Oliver does not teach modifying visual network plan according to hardware/software exists in the protocol tester because the colors of the network map in Oliver are not modified or changed to reflect the capability (i.e., hardware/software) of the performance monitor.

The examiner disagrees. The examiner is unable to find the alleged limitations (i.e., modifying the network plan to reflect the capability) in the present claims.

Appellant also alleges that Oliver does not teach modifying visual network plan according to hardware/software exists in the protocol tester because Oliver does not teach using the actual hardware/software existing (i.e., available) on the protocol tester to modify the visual network plan.

The examiner disagrees. The examiner is unable to find the alleged limitations (i.e., using the actual available hardware/software to modify the visual network plan) in the present claims.

Appellant further alleges that Oliver does not teach an interpreter that marks elements and takes action according to the hardware/software of the protocol tester.

The examiner disagrees. Oliver teaches using the performance monitor that functions as an interpreter to mark and display network elements and their associated attributes (performance metrics) (see par. [54], [55]). Oliver also teaches that the performance monitor to take actions when any performance metric exceeds a predetermined threshold (see par. [56]).

Per claims 20 and 21, appellant alleges that Oliver does not teach identifying hardware/software components stored on the measuring device.

The examiner disagrees. Oliver teaches defining and configuring software components (e.g., polling agents) and hardware components (e.g., master database) to implement the monitoring system (see par. [31], [33]). It would have been obvious to one skilled in the art that such hardware and software components must have been properly identified (i.e., by identifiers, addresses, etc.,) by the monitoring system.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Viet Vu/

Primary Examiner, Art Unit 2454

Conferees:

Nathan Flynn

/NATHAN FLYNN/

Supervisory Patent Examiner, Art Unit 2454

/John Follansbee/

Supervisory Patent Examiner, Art Unit 2451